

State Board of Equalization

**OPERATIONS MEMO**

For Public Release

No. : 1144

Date : April 30, 2007

**SUBJECT: Website List of 250 Largest Sales and Use Tax Delinquencies**

**I. GENERAL**

Background

Assembly Bill 1418 added Article 1.5 (commencing with section 7063) to Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code. The new law directs the Board of Equalization (Board) to make publicly available each quarter, a list of the 250 largest sales and use tax delinquencies (liabilities) in excess of one hundred thousand dollars (\$100,000). The list will be made available on the Board's website.

For purposes of compiling the list that will be placed on the Board's website, a liability means an amount owed to the Board that meets all of the following criteria. The liability must be:

- A. Based on a determination made under Article 2 (commencing with section 6481) or Article 3 (commencing with section 6511) of Chapter 5 deemed final pursuant to Article 5 (commencing with section 6561) of Chapter 5, or that is "due and payable" under Article 4 (commencing with section 6536) of Chapter 5 or self-assessed by the taxpayer;
- B. Recorded as a notice of state tax lien pursuant to Chapter 14 (commencing with section 7150) of Division 7 of Title 1 of the Government Code, in any county recorder's office in this state; and
- C. For an amount of tax delinquent for more than 90 days.

If a tax liability meets any of the following criteria it may not be included on the list:

- A. A liability that is under litigation in a court of law;
- B. A liability for which payment arrangements have been agreed to by both the tax debtor and the Board and the tax debtor is in compliance with the arrangement;
- C. A liability for which the taxpayer has filed for bankruptcy protection pursuant to Title 11 of the United States Code, and the bankruptcy case is still pending. For taxpayers where the liabilities were discharged in bankruptcy, an existing lien must attach to real property prior to the filing of the bankruptcy, otherwise the accounts should not be listed.

Each quarterly list shall, with respect to each liability, include all of the following:

- A. The names of the person or persons liable for payment of the tax and that person's or persons' last known address;
- B. The amount of the liability as shown on the notice or notices of state tax lien including any applicable interest or penalties, less any amounts paid;
- C. The earliest date that a notice of state tax lien was filed; and
- D. The type of tax that is delinquent.

Prior to making a liability a matter of public record on the Board's website, the Board will provide a preliminary written notice to the person or persons liable for the tax by certified mail, return receipt requested. The letter will advise the tax debtor of the Board's intent to place their name on the list and the basis for the action. It will also explain what the tax debtor has to do to prevent their name from appearing on the list. The letter will be sent from headquarters by the Automated Compliance Management System (ACMS) and will include the responsible collector's name and contact information. If within 30 days after issuance of the notice the person or persons do not remit the amount due or make arrangements with the Board for payment of the amount due, the liability shall be included on the list.

The quarterly list will include the following:

- A. The telephone number and address of the Compliance and Technology Section (CTS), in headquarters, for taxpayers to contact if they believe their name is on the list in error.
- B. The aggregate number of persons that have appeared on the list who have satisfied their liability in their entirety and the dollar amounts, in the aggregate, that have been paid related to the liabilities that have appeared on the list.
- C. Any payments made towards liabilities on the list if requested by the tax debtor.

The Board must remove the taxpayer's name from the tax delinquency list no later than five business days from the occurrence of any of the following:

- A. The person liable for the tax has contacted the Board and entered into a payment agreement to satisfy the liability. However, if the person fails to comply with the payment agreement after having his/her name removed from the list, the Board shall add that person's name to the list without providing him or her with an additional written notice.
- B. The Board has verified that an active bankruptcy proceeding has been initiated for the liability;
- C. The Board has verified that a bankruptcy proceeding has been completed and there are no assets available with which to pay delinquent amount or amounts;
- D. The Special Procedures Section has approved the liability for write-off.

## **II. HEADQUARTERS RESPONSIBILITY**

Compliance Policy Unit (CPU)

Each quarter, CPU staff will coordinate with the Technology Services Division (TSD) to extract a list of candidates that may qualify for the Internet list from ACMS, based on the required criteria stipulated above. The list will be sent to district offices and Centralized Collection Section (CCS) to determine if all the criteria have been met.

CPU staff will consult the Offer-In-Compromise (OIC) Section or the Special Procedures Section as appropriate for accounts being reviewed for an OIC or write-off to determine if the accounts should be placed on the list.

Special Procedures Section (SPS)

Once an account on the list has received final approval by SPS for write-off, SPS shall immediately notify CPU so that the account may be removed from the list.

**III. DISTRICT OFFICE/CCS RESPONSIBILITY**

As a part of determining the potential liabilities to be placed on the quarterly list, each district office and CCS will be sent a list of potential candidates for this notice for whom the district office or CCS is responsible for performing collection activity. Once the review is complete, the district office/CCS administrator will return the list via email to the originator in CPU certifying which accounts on the list qualify for posting on the website. As used below, the term “qualifying liabilities” means individual differences that solely, or in combination, cause the account to qualify for listing on the Internet. The districts or CCS must ensure that:

- A. The qualifying liabilities have been final for more than 90 days;
- B. The Board has recorded a notice of state tax lien for the qualifying liabilities in a California county recorder’s office;
- C. The current amount due for the qualifying liabilities is in excess of \$100,000;
- D. The qualifying liabilities are not under litigation in a court of law;
- E. The qualifying liabilities are not in the appeal process. For the purpose of this process, if all of the tax liability, with the exception of the penalty and interest, has been paid and a refund request has been submitted, we will consider this as an appeal.
- F. The taxpayer is not in bankruptcy status;
- G. The account is not on a payment plan;
- H. The mailing address is up to date by checking EDD, DMV, FTB, Lexis-Nexis and other available search tools;
- I. For partnerships, husband-wife co-ownerships, and registered domestic partnerships, ensure that all listed taxpayers are liable for the qualifying liabilities. If individual partners are liable for lesser amounts, specify those amounts on the attached list. If all partners are liable for the full amount, no special notation will be required;

- J. For taxpayers whose liabilities were discharged in bankruptcy, ensure that existing liens attached to real property prior to the filing of the bankruptcy. If the liens did not attach to any real property, then the accounts should not be listed;
- K. The accounts have not been written off. An account is considered written off when it has been approved by all required levels within the Special Procedures Section.

The districts and CCS will continue to be responsible for collection of accounts posted on the list. Returned mail updates will be sent from CPU to the responsible district/CCS to determine if a better address exists by using skip tracing tools such as DMV, FTB and Lexis-Nexis. If a better address is found, the address should be updated in IRIS and ACMS and the information should be relayed to CPU who will generate a new letter from ACMS and send it to the tax debtor. Mail that is returned with the *unclaimed* and *refused* mail reasons need not be further researched and will be included on the list. CPU will ensure that the account is not posted to the list if the new letter is generated less than 30 days from the next list update.

Once an account has been posted on the list, it should be closely monitored for any changes that would require it to be pulled from the list. If this happens, CPU should be contacted immediately by phone at (916) 445-5167 to remove the account from the list. The legislation requires that the tax debtor's name be removed from the list no more than five days after the Board is notified of an action that disqualifies it from placement on the list.

#### **IV. OBSOLESCENCE**

This operations memo will become obsolete when the information it contains is incorporated in chapter 7 of the Compliance Policy and Procedures Manual.

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Distribution 1-D